

**UNITED STATES DISTRICT COURT FOR THE  
DISTRICT OF MASSACHUSETTS**

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**CHARTER COMMUNICATIONS  
ENTERTAINMENT I, LLC d/b/a  
CHARTER COMMUNICATIONS,**

**Plaintiff**

**v.**

**RICHARD A. LENIHAN**

**Defendant**

**Civil Action Number**

**04-40213 FDS**

**MOTION TO DISMISS**

The Defendant Richard A. Lenihan ("Lenihan") respectfully moves this Court to dismiss the Complaint of the Plaintiff, Charter Communications Entertainment I, LLC, d/b/a Charter Communications ("Charter") pursuant to Rule 12(b)(6), Fed.R.Civ.P.

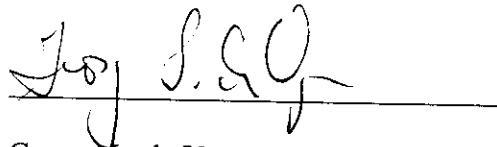
The Complaint of Charter fails to state a claim upon which relief can be granted in that the Complaint evidences that the claims of Charter are barred by the statute of limitations. When the federal statutes which Charter allegedly seek to enforce do not specify a statute of limitations for actions brought under the statute, state law is the appropriate source, with federal courts applying the closest state-law analogue. As 47 U.S.C. §§ 553 and 605 impose penal sanctions on violators, these statutes are "penal" statutes, and the applicable analogue statute of limitations under Massachusetts law is the one-year statute of limitations set forth in M.G.L.c. 260 § 5. The Complaint evidences knowledge of the alleged breach of Sections 553 and 605 more than one year prior to the filing of this action, and thus requires that this action be dismissed.

Additionally, Charter recites in its Complaint that it is a cable operator, and alleges that cable service was authorized at defendant Lenihan's residences. Section 605 does not expressly bar the interception of cable communications carried over coaxial cable. United States v. Norris, 88 F.3<sup>rd</sup> 462 (7<sup>th</sup> Cir. 1996). As the Complaint expressly alleges interception of cable communications carried by cable, all claims of Charter under this statute are improperly brought and should be dismissed.

Lenihan respectfully moves this Court to dismiss the Complaint and to award Lenihan such other relief as this Court may find just and appropriate. A separate Memorandum of Law in support of this Motion to Dismiss is simultaneously submitted with this Motion.

RESPECTFULLY SUBMITTED

RICHARD A. LENIHAN

A handwritten signature in dark ink, appearing to read "George L. de Verges", is written over a horizontal line.

George L. de Verges, BBO No. 600067

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COUNSEL FOR THE DEFENDANT

UNITED STATES DISTRICT COURT FOR THE  
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CHARTER COMMUNICATIONS,	)	
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Plaintiff	)	
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v.	)	Civil Action Number
	)	
RICHARD A. LENIHAN	)	04-40213 FDS
	)	
Defendant	)	
	)	

CERTIFICATE OF SERVICE

I, George L. de Verges, attorney for Defendant Richard A. Lenihan, in the above captioned matter, certify that I served a copy of the MOTION TO DISMISS by mailing first class, postage prepaid, to:

Christopher L. Brown, Esq.  
Murtha Cullina  
99 High Street  
Boston, MA 02110

Date: November 23, 2004

  
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